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DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548**FILE:** B-196633**DATE:** May 19, 1980**MATTER OF:** Oscar G. Adams [Claim for Retroactive
Promotion and Backpay]

DIGEST: Employee is not entitled to remedy of temporary promotion and backpay prescribed in our Turner-Caldwell decisions where he has been detailed to or has performed duties of higher-grade position which has not been classified because it is well-established rule that employee may not be promoted to position which has not been classified. Employee has not sustained burden of proof based on one letter from fellow employee in support of his contention that he was detailed to and performed full range of duties of higher-grade classified position.

This action is in response to a request for reconsideration by Mr. Oscar G. Adams of our decision B-196633, January 4, 1980. Mr. Adams' claim for a retroactive promotion with backpay was denied because the record failed to show that he was detailed to an established higher-graded position. Further, Mr. Adams had not presented any proof that he was detailed.

Mr. Adams has presented a letter from Mr. Emil F. Hawes, Sr., Beaufort, South Carolina, in support of his contention that he was detailed. We requested the Department of the Navy, Headquarters, United States Marine Corps (the Department), to comment on the additional information and its reply is also part of the record.

Mr. Adams bases his claim to a temporary promotion and backpay on our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), and 56 id. 427 (1977), which held that employees detailed to higher-grade positions for more than 120 days, without Civil Service Commission (now Office of Personnel Management) approval, are entitled to retroactive temporary promotions with backpay for the period beginning with the 121st day of the detail until the detail is terminated. However, that rule is predicated upon the employee being detailed formally or informally to an existing position. See 56 Comp. Gen. 427, supra, at 430.

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The Civil Service Commission has promulgated instructions implementing our Turner-Caldwell decisions in its Federal Personnel Manual (FPM) Bulletin No. 300-40, dated May 25, 1977. Paragraph 4 of the Bulletin defines a detail as follows:

"A detail is the temporary assignment of an employee to a different position within the same agency for a brief, specified period, with the employee returning to regular duties at the end of the detail. For purposes of this decision, the position must be an established one, classified under an occupational standard to a grade or pay level." (Emphasis in original.)

Paragraph 8F of the FPM Bulletin requires agencies, in accordance with FPM Supplement 296-31, Book II, subchapter S3-13, to record details in excess of 30 calendar days on Standard Form 52 or other appropriate form and to file it on the permanent side of the employee's Official Personnel Folder. However, in the absence of this form of documentation, paragraph 8F further allows the employee to provide other forms of acceptable proof of his detail. Such acceptable documentation includes (1) copies of Standard Forms 50 or 52 or official memoranda of assignment, (2) a written statement from the person who supervised the employee during the period in question, or other management official familiar with the work, certifying that to his or her personal knowledge the employee performed the duties of the particular established, classified position for the period claimed, or (3) a decision under established grievance procedures.

Mr. Adams claimed he was detailed during the period August 26, 1974, to January 1, 1978. The Department states in its report that Mr. Adams was assigned to Position Description 2552, which was at the GS-7 level in 1974, recertified at that level in 1977, and remained at that grade until it was replaced on February 14, 1978, by Position Description 2676, Civil Engineering Technician (Drafting), GS-802-9. Thus, a higher-grade classified position was not established until 1-1/2 months after the alleged higher-grade detail of Mr. Adams. The remedy of temporary promotion and backpay prescribed in Turner-Caldwell is not available where an employee has been detailed to or has performed the duties of a higher-grade position which has not

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been classified. Helen Mansfield, B-192765, May 9, 1979; Donald P. Konrad, B-193555, January 26, 1979. This is so because of the well-established rule that an employee may not be promoted to a position which has not been classified. Hubert J. Buteau, B-187287, May 13, 1977.

The Department also says that Mr. Hawes was the engineer in charge of projects and from time to time provided work direction to Mr. Adams. Mr. Hawes was not Mr. Adams' supervisor, and as a project engineer, not a management official, he did not have the authority to detail Mr. Adams to work outside of his GS-7 level position. In addition we note that Mr. Hawes did not report to the Marine Corps Air Station, Beaufort, South Carolina, until February 7, 1977. Thus, he was only acquainted with Mr. Adams and his work for approximately 11 months. Further, the Department says that the examples of work cited by Mr. Hawes do not exceed the GS-7 level. Therefore, we do not believe that one letter from a fellow employee constitutes sufficient documentation establishing that Mr. Adams was officially detailed to and performed the full range of duties of a higher-grade classified position. He has still not sustained his burden of proof and his claim must be denied. Vernon P. Humphries, B-194890, March 28, 1980; Lawrence D. Sutton, B-195598, December 20, 1979; Ronald J. Beach, B-195480, November 8, 1979.

Accordingly, our decision B-196633, January 4, 1980, is sustained.

Acting

Milton J. Fowler
Comptroller General
of the United States